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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/869,476	06/28/2001	Leda Marie Perlado Guarin	AA387F	4213

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THE PROCTER & GAMBLE COMPANY  
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EXAMINER

HARDEE, JOHN R

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 02/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/869,476

Applicant(s)

GUARIN ET AL.

Examiner

John R. Hardee

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 11-23 is/are pending in the application.
- 4a) Of the above claim(s) 11-16 and 20-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
- Paper No(s)/Mail Date \_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 29, 2004 has been entered.

### ***Election/Restrictions***

2. Applicant has traversed the restriction requirement which was made in the first office action. The traversal is moot because the restriction has already been made final. Furthermore, arguments drawn from chapter 8 of the MPEP are inapplicable because the restriction was made using the lack of unity rules, under which a restriction is warranted if the invention as a whole does not make a contribution over the prior art.
3. The examiner is unaware of any patentability report which is of record in this case.
4. No claims can pass to issue until all non-elected subject matter has been deleted from the claims.

***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/04772 in view of WO 97/03172. The '772 reference discloses fabric care compositions which reduce fabric creasing. The compositions may comprise a fabric softening compound as described on pp. 8-10. Amounts of fabric softener are not specifically disclosed, but compositions comprising 0.05% to 0.5% are exemplified. Addition of silicone is optional. Accordingly, it would be obvious not to include silicone. It is beneficial for spray products to comprise ethanol, isopropanol or a glycol (p. 13, lines 28-30). Addition of hydrotropes is disclosed at p. 14, line 21. As hydrotropes are used to solubilized insoluble substances in water, this amounts to an implicit teaching of the utility of one-phase (clear) compositions. Spraying and ironing after laundering is disclosed in the examples. This reference does not disclose specific glycols meeting the asymmetry or C logP limitations recited by applicant.

WO 97/03172 discloses clear fabric softening compositions comprising the same class of diesterquats disclosed in 'the '772 in combination with a principal alcohol solvent at less than about 40%, said alcohol having the same C logP limitations as applicant's solvent. The diesterquat is present at a minimum concentration of "about 2%" (p. 2, line 6). Numerous diols which afford clear compositions are disclosed at pp. 17+.

It would have been obvious at the time the invention was made to use such a diol in the compositions of the '772, because the '772 discloses that diols are useful solvents in compositions which are taught implicitly to be clear or translucent, and the '172 discloses a plethora of diol solvents which can be used to make clear diesterquat compositions wherein the diesterquat content meets that recited by applicant. The person of ordinary skill in the surfactant art would expect the recited compositions to have properties similar to those compositions which are exemplified, absent a showing to the contrary. Discovery of the solvation-effective amount of a solvent amounts to routine experimentation and would be obvious to do.

In the case where the claimed ranges overlap or lie inside ranges disclosed by the prior art, a *prima facie* case of obviousness exists. *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed Cir. 1990).

### ***Response to Arguments***

7. Applicant's arguments filed January 29, 2004 have been fully considered but they are not persuasive. Applicant argues that in some instances, hydrotropes can make hydrophilic materials less soluble, citing the *Colloids and Surfaces* article. Applicant's point is well taken, but the thrust of the article is that this is aberrant behavior, rather than typical behavior. As is pointed out in the first sentence of the article, the function of hydrotropes is to solubilize lipophiles. Faced with a cloudy or two-phase composition, the person of ordinary skill in the surfactant art will employ a hydrotrope which works,

rather than use one which makes the situation worse, all the more so since this article alerts the practitioner to the possibility that some hydrotropes, under certain circumstances, won't function as hydrotropes. Skill in the art is assumed and one should not underestimate one having ordinary skill in the art. *In re Sovish*, 769 F.2d 738, 226 USPQ 771 (Fed. Cir, 1985). Determining which hydrotrope works best amounts to simple formulation chemistry, which is well within the abilities of the person of ordinary skill in the art, and use of a hydrotrope is motivated by the teachings of the prior art.

8. Applicant's arguments regarding the glycol are well taken, and additional art has been cited to show that the use of glycols to afford clear fabric softening compositions was known at the time of applicant's filing.

9. Applicant has demonstrated that the specification does provide an adequate definition of "essentially free of", so that rejection is withdrawn.

10. This action contains new grounds of rejection that were not motivated by applicant's amendment. Accordingly, this action is NOT FINAL.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (571) 272-1318. The examiner can normally be reached on Monday through Friday from 8:00 until 4:30. In the event that the examiner is not available, his supervisor, Dr. Yogendra Gupta, may be reached at (571) 272-1316.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'J. Hardee', is positioned above the printed name.

John R. Hardee  
Primary Examiner  
February 13, 2004